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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)
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Streamlining the Commission's)
Antenna Structure Clearance)
Procedure)
)
and)
)
Revision of Part 17 of the)
Commission's Rules Concerning)
Construction, Marking and)
Lighting of Antenna Structures)

WT Docket No. 95-5

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To: The Commission

COMMENTS OF
MOBILE TELECOMMUNICATION TECHNOLOGIES CORP.

Mobile Telecommunication Technologies Corp. ("Mtel")^{1/}, by its attorneys and pursuant to Section 1.415 of the Commission's rules, respectfully submits its comments in response to the Commission's Notice of Proposed Rulemaking in the captioned proceeding.^{2/}

^{1/} Mtel and its subsidiaries, including SkyTel Corp. ("SkyTel") and Destineer Corp. ("Destineer"), are Commission licensees providing a wide range of high technology wireless communications services. SkyTel holds one Part 22 Commercial Mobile Radio Service ("CMRS") network paging license and numerous Part 22 CMRS non-network paging licenses. Destineer, which is the only entity ever to have been awarded a narrowband PCS pioneers preference award, holds three narrowband nationwide PCS authorizations. In order to provide these services on a nationwide basis, Mtel operates from hundreds of antenna structures across the country. Accordingly, Mtel is well positioned to provide the Commission with informed comment in this proceeding.

^{2/} Notice of Proposed Rule Making in WT Docket No. 95-5 ("Notice"), FCC 95-16, 10 FCC Rcd ___, released January 20, 1995. In the Notice, the Commission requested that comments be filed by March 21, 1995, and that Reply Comments be filed by April 20, 1995. Accordingly, these comments are timely

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I. INTRODUCTORY STATEMENT AND OVERVIEW

Mtel generally supports the proposals presented by the Commission in the Notice. They streamline its antenna structure clearance procedure and improve upon the Commission's Part 17 rules governing construction, marking and lighting of antenna structures.^{3/} Mtel wholeheartedly endorses the Commission's proposal to simplify the current antenna structure clearance process by providing that the FCC Form 854 registration form be submitted by antenna structure owners, rather than by licensees or permittees using the structures. Similarly, Mtel supports the Commission's proposal to make antenna structure owners primarily responsible for compliance with Commission painting and lighting specifications.

By these comments, Mtel not only expresses strong support for the Commission's proposals generally, but also presents certain proposals that Mtel submits will further strengthen proposed rules governing construction, marking, lighting of antenna structures, and antenna structure clearance. Chief among these is the deletion of any provision that licensee be "secondarily" liable for any failure of structure owners to comply with applicable Commission rules. For the reasons set forth below, Mtel submits that the

filed.

^{3/} The Commission has also proposed related revisions to Parts 0, 1, 17, 21, 22, 23, 25, 73, 74, 78, 80, 87, 90, 95 and 97 of the Commission's rules, but the focus of the Commission's proposal, and these comments, is on the proposed revisions to Part 17.

public interest would be served by the Commission's adoption of the proposals set forth in these comments. In support, the following is shown:

**II. TOWER OWNERS SHOULD BEAR SOLE RESPONSIBILITY
FOR COMPLIANCE WITH COMMISSION RULES RELATING
TO TOWER MAINTENANCE**

Currently, each licensee of facilities on a multi-use antenna structure is individually responsible for the installation and maintenance of the structure, pursuant to Part 17.^{4/} In its Notice, the Commission proposed to make tower owners primarily responsible for the installation and maintenance of painting and/or lighting for each antenna structure. Notice, at Para. 21. Antenna structure owners who do not comply with Part 17 are subject to administrative sanctions. Unfortunately, the Commission also proposed that licenses should be "secondarily" liable for tower violations.^{5/}

Mtel supports that portion of the Commission's proposal that provides for owners of tower structures to bear responsibility for the maintenance of their structures and their compliance with the

^{4/} In 1992, Congress amended Sections 303(q) and 503(b)(5) of the Communications Act to: 1) make antenna structure owners responsible for the painting and lighting of antenna structures, and 2) provide that non-licensee antenna structure owners may be subject to forfeiture for violations of painting and lighting requirements as specified by the Commission.

^{5/} Proposed Rule Section 17.6 provides that in the event of default by the antenna structure owner, each licensee or permittee authorized on an antenna structure shall be responsible for ensuring that the structure complies with requirements of this part.

Commission's rules. As the Commission acknowledged in the Notice, licensees frequently neither own nor have a legal right to maintain a tower structure. Yet under existing rules they are still individually responsible for antenna structure maintenance.

Mtel submits that the second part of the Commission's proposal, which would hold non-owner tenant licensees and permittees secondarily responsible for the maintenance of the tower and compliance with the Commission's rules is contrary to the public interest and should be abandoned, for several reasons.^{6/} First and foremost, this errant portion of the Commission's proposal would have the effect of taking back from licensees the very benefit which the first portion conveyed to them. While the Commission's proposal, on the one hand, rids the licensee community of the currently existing burden of responsibility for matters over which they have no control, the second portion of the proposal would efficiently reimpose that very burden. Responsible licensees would not be able to reduce in any meaningful way the logistically burdensome task and precautions that they must now undertake to fulfill their licensee obligations and to protect themselves against financial liability--because they would still be liable if

^{6/} For example, it will be impossible for the licensee of a nationwide system to insure that the many different owners of the towers from which it operates are fulfilling their obligations to comply with the Commission's rules. Further, in the event that the tower owner should become liable for the payment of administrative sanctions or monetary judgments, the non-owner licensees or permittees should not be exposed to liability because the tower owner goes bankrupt or otherwise refuses to pay.

the tower owner defaults for any reason. As a result, the savings that would otherwise accrue through removal of the currently existing rules that impose upon multiple licensees redundant filing and monitoring obligations would be lost.

There are also many logistical complications associated with this "secondary" responsibility which provide a further basis for abandoning it. For example, what steps does the Commission have to follow in attempting to reach the tower owner prior to contacting non-owner licensees or permittees? Does each non-owner tenant licensee or permittee become subject to administrative sanctions merely due to the tower owner's failure to comply with Part 17 of the Rules, or is the licensee first afforded notice of a particular owner's default, and permitted an opportunity to correct shortcomings before becoming liable? What steps must a non-owner licensee or permittee take to maintain the structure upon notification by the Commission, when the non-owner licensee or permittee has no legal right to enter the tower property and maintain the structure?

Mtel submits that the Commission's proposal should expressly provide that only when a tower owner has failed in its duty to maintain a structure or comply with the Commission's rules and the Commission has provided adequate notice to the non-owner licensees and permittees of such failure and an opportunity to cure, does the non-owner licensees and permittees become subject to sanctions.

**III. THE COMMISSION SHOULD CLARIFY WHEN AND IF
AN ANTENNA REGISTRATION MUST BE FILED BY A LICENSEE**

The Commission proposes to replace the current antenna clearance process with rules requiring registration of antenna structures by the owners, rather than by each licensee or permittee.^{7/} This registration on FCC Form 854 would apply to all towers which require FAA notification. The Commission requested comment on how this registration would apply to different services which do not specify each antenna site on the FCC authorization. Notice, at Para. 12.^{8/}

Mtel supports the Commission's proposal that the tower registration process be directed toward tower owners. Under that proposal, applicants in any service where site-specific filings are not required would not be obligated to provide a Registration Number prior to grant of a system authorization. Further, Mtel submits that the Commission should affirmatively provide that licensees of services which are not required to file applications for individual sites do not have to submit an FCC Form 854 or a Registration Number to the Commission. For example, if a licensee

^{7/} This means that a single entity, the antenna structure owner, would be primarily responsible for: (1) registering the antenna structure with the FCC; (2) maintaining the painting and lighting of the antenna structure in accordance with the Commission's Rules; (3) notifying the Commission of any changes in height, coordinates, ownership, painting or lighting of the structure; and (4) notifying the Commission upon dismantling the structure.

^{8/} These include cellular, where authorizations no longer include internal cell sites, and PCS, which does not specify transmitter locations.

is adding an internal site for which an application is not necessary, the licensee should not be required to file an FCC Form 854 for that site.

IV. CONCLUSION

Mtel compliments the Commission for initiating this rulemaking proceeding which will greatly streamline the antenna structure clearance process and place primary responsibility for the maintenance of the antenna structures where it belongs, with the owners of the structure. Mtel supports the Commission's proposals generally but submits for the industry to truly benefit from the proposed rule revisions that the Commission should fine tune its proposals consistent with Mtel's comments and proposals above. Such modifications would be consistent with Commission policy, and will contribute to the more efficient use of the Commission's resources and serve the public interest.

Respectfully submitted,

MOBILE TELECOMMUNICATION
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March 21, 1995

CERTIFICATE OF SERVICE

I, Catherine M. Seymour, a secretary in the law firm of Lukas, McGowan, Nace & Gutierrez, Chartered, do hereby certify that I have on this 21st day of March 1995, have had hand delivered copies of the foregoing "COMMENTS OF MOBILE TELECOMMUNICATION TECHNOLOGIES CORP." to the following:


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